PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number 20423-08313
Application Number 10/776,445	Filed February 10, 2004
First Named Inventor Andrew P. Haslam	
Art Unit 2163	Examiner Helene Roberta Rose

This request is being filed with a notice of appeal.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

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July 5, 2007
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 1 of 1 forms is submitted.

ATTACHMENT TO THE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Pre-appeal review is requested because the rejections of record are clearly improper and without any factual or legal basis. Applicants respectfully request that the Panel indicate claims 1-37 recite allowable subject matter.

I. Status of the Claims

Claims 1-37 are pending and stand finally rejected. No claims have been amended since the last Office Action.

II. Rejection of claims 1, 18, and 28 under 35 USC § 102(b)

Independent claims 1, 18, and 28 are rejected under 35 USC § 102(b) as allegedly being unpatentable over U.S. Patent No. 5,761,678 to Bendert. Claim 1 recites a method for in-place preservation of file system objects during a clone operation comprising, *inter alia*, the following:

> ...
>
> the cloning manager identifying at least one **protected area** within the boundaries **reserved for the file system to be created** by the clone operation;
>
> the cloning manager identifying at least **one in-place file system object** at least partially within the boundaries to be **preserved during the clone operation**; ...
>
> the cloning manager **ensuring that each in-place file system object** at least partially within the boundaries to be preserved during the clone operation **is not located in a protected area**; and
>
> the cloning manager **creating the file system during the clone operation only in locations within the boundaries in which no in-place file system object to be preserved is located**.
>
> (emphasis added)

As can be seen, the claim recites identifying a protected area and an in-place file system object within the boundaries of a clone file system to be created. The boundaries refer to the

location of the destination of the clone (for example, a range of sectors on a disk where the clone will be written), not the location of the source data that are being cloned. The protected area will hold a portion of the file system created during the clone operation, while an in-place file system object is to be preserved (i.e., not overwritten) during the clone operation. The cloning manager ensures that there are no in-place file system objects in the protected area, and the cloning manager creates the clone file system while preserving the in-place file system object. The claimed invention beneficially allows for cloning a file system while preserving certain file system objects already existing at the destination where the cloned file system is to be created.

Claims 18 and 28 contain language similar to claim 1 and all arguments presented below regarding claim 1 equally apply to claims 18 and 28.

Bendert discloses a system for creating a "clone storage area" from a "base storage area" and copying data blocks pointed to by the clone storage area over time as those blocks are modified. However, Bendert does not address the issue of preservation of data already existing at the clone storage area or at copied data blocks. In col. 5, lines 61-63, Bendert mentions only that a new clone storage area 100' is created by "obtaining a storage allocation," and col. 5, line 33 mentions "a new block is allocated." Bendert does not discuss any further the locations of the clone storage area or copied blocks, and does not address the issue of any file system objects already existing at those locations.

Accordingly, Bendert does not disclose "the cloning manager identifying at least one in-place file system object at least partially within the boundaries to be preserved during the clone operation." Since Bendert does not address the issue of preservation of data already existing at the clone storage area, Bendert has no concept of an in-place file system object to be preserved, where the object is at least partially within the boundaries of a file system to be created by a

clone operation. The examiner cites the abstract of Bendert as disclosing this element. However, the abstract does not mention the preservation of any objects already existing in the clone storage area.

Bendert further does not disclose "the cloning manager ensuring that each in-place file system object at least partially within the boundaries to be preserved during the clone operation is not located in a protected area." Since Bendert is not concerned with the preservation of in-place file system objects, Bendert is also not concerned with ensuring that such objects are not located in a protected area. The examiner asserts that Bendert discloses this element at col. 2, lines 51-58, which describes the creation of the clone storage area and the copying of data to the clone storage area (and updating of metadata) as the base storage area is modified. This portion does not disclose preserving already existing areas of the clone storage area and ensuring that those areas are not within protected areas.

Finally, Bendert does not disclose "the cloning manager creating the file system during the clone operation only in locations within the boundaries in which no in-place file system object to be preserved is located." The examiner cites col. 3, lines 63-67 for this element. This section describes a Copied PBNs Table ("CPT") listing block numbers which have been copied from the base storage area to the clone storage area. The cited text does not disclose creation of the clone file system only in locations in which no in-place file system object to be preserved is located. As stated at col. 3, lines 66-67, a CPT only applies to a base storage area, not a clone storage area.

Examiner responded to the arguments raised above in an Advisory Action dated June 7, 2007. Examiner argues that Bendert discloses the preservation of data already existing at the destination in col. 4, lines 11-15, which states "A clone storage area is used to preserve the base

storage area object metadata and data that existed at the time the clone storage area was created." However, this portion is referring to preserving data existing in the **base storage area**, not preserving data existing in the **clone storage area**. Any standard clone operation is concerned with preservation of data at the source (i.e., the base storage area). The claimed invention, however, is additionally concerned with preservation of data previously existing at the destination.

III. Summary

Based on the foregoing, Applicants respectfully submit that each of the pending rejections suffers from a clear deficiency in the prima facie case asserted in support of the rejection. Accordingly, Applicants request that the rejections of claims 1, 18, and 28, and dependent claims 2-17, 19-27, and 29-37 be withdrawn.

Respectfully submitted,
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